

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

DEBORAH B. ADAMS,)
)
Plaintiff,) Case No.: 3:11cv141
v.)
)
KROGER LIMITED PARTNERSHIP I)
)
and)
)
REPUBLIC NATIONAL DISTRIBUTING)
COMPANY, LLC,)
)
Defendants.)

PLAINTIFF'S REQUESTED JURY INSTRUCTIONS

General Instructions

1. 2.020 - Credibility of Witnesses
2. 2.030 – Adverse Witness
3. 2.040 – Expert Witnesses
4. 2.060 – Party Bound By His Own Testimony
5. 2.100 – Circumstantial Evidence

Issues, Burden of Proof and Finding Instructions

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7. 3.050 – Finding Instruction
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Negligence

10. 4.000 – Definition of Negligence

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14. 6.040 – Contributory Negligence: Burden of Proof

15. 6.060 – Contributory Negligence: Right to Assume Ordinary Care

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18. 8.070 – Employer’s Liability For Acts of Employee’s Assistant

Damages

19. 9.000 – General Personal Injury

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21. *Love v. Schmidt*, 239 Va. 357, 361, 389 S.E.2d 707, 708 (1990) and
Southern Floors and Acoustics v. Max-Yeboah, 267 Va. 682, 688, 594 S.E.2d 908, 912 (2004) – Notice to Kroger

Owners and Occupants

22. 23.020 - Definition of Invitee

23. 23.030 - Invitee’s Right to Assume Safe Condition of Premises

24. 23.040 – Occupant’s Duty to Invitee: General

25. 23.050 – Occupant’s Duty to Invitee: Remove Foreign Objects

Respectfully submitted,

DEBORAH B. ADAMS

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 27th day of February, 2012, the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will electronically notify the following:

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PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 1

CREDIBILITY OF WITNESSES

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

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You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 2

ADVERSE WITNESS

The plaintiff called the defendant as an adverse witness. The plaintiff is bound by as much of the defendant's testimony given as an adverse witness as is clear, logical, reasonable and uncontradicted.

The plaintiff is not bound by any of the defendant's testimony given as an adverse witness that conflicts with any of the other evidence in the case.

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PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 3

EXPERT WITNESSES

In considering the weight to be given to the testimony of an expert witness, you should consider the basis for his opinion and the manner by which he arrived at it.

JURY INSTRUCTION NO. _____

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PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 4

PARTY BOUND BY HIS OWN TESTIMONY

When one of the parties testifies unequivocally to facts within his or her own knowledge, those statements of fact and the necessary inferences from them are binding upon him or her. He or she cannot rely on other evidence in conflict with his or her own testimony to strengthen his or her case.

However, you must consider his or her testimony as a whole, and you must consider a statement made in one part of his or her testimony in the light of any explanation or clarification made elsewhere in his or her testimony.

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When one of the parties testifies unequivocally to facts within his or her own knowledge, those statements of fact and the necessary inferences from them are binding upon him or her. He or she cannot rely on other evidence in conflict with his or her own testimony to strengthen his or her case.

However, you must consider his or her testimony as a whole, and you must consider a statement made in one part of his or her testimony in the light of any explanation or clarification made elsewhere in his or her testimony.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 5

CIRCUMSTANTIAL EVIDENCE

Any fact that may be proved by direct evidence may be proved by circumstantial evidence; that is, you may draw all reasonable and legitimate inferences and deductions from the evidence.

JURY INSTRUCTION NO. _____

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PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 6

NEGLIGENCE: ISSUES AND ALLOCATION OF BURDENS OF PROOF

Your verdict must be based on the facts as you find them and on the law contained in all of these instructions.

The issues in this case are:

- (1) Were the defendants or either one of them negligent?
- (2) If the defendants were negligent, was their negligence a proximate cause of Mrs. Adams' fall?

On these issues the plaintiff has the burden of proof.

- (3) Was the plaintiff negligent?
- (4) If she was negligent, was her negligence a proximate cause of her fall?

On these issues the defendant has the burden of proof.

- (5) If the plaintiff is entitled to recover, what is the amount of her damages?

On this issue, the plaintiff has the burden of proof.

Your decision on these issues must be governed by the instructions that follow.

JURY INSTRUCTION NO. _____

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- (1) Were the defendants or either one of them negligent?
- (2) If the defendants were negligent, was their negligence a proximate cause of Mrs. Adams' fall?

On these issues the plaintiff has the burden of proof.

- (3) Was the plaintiff negligent?
- (4) If she was negligent, was her negligence a proximate cause of her fall?

On these issues the defendant has the burden of proof.

- (5) If the plaintiff is entitled to recover, what is the amount of her damages?

On this issue, the plaintiff has the burden of proof.

Your decision on these issues must be governed by the instructions that follow.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 7

FINDING INSTRUCTION

You shall find your verdict for the plaintiff if she has proved by the greater weight of the evidence that:

- (1) the defendants were negligent; and that
- (2) the defendants' negligence was a proximate cause of the plaintiff's accident and damages.

You shall find your verdict for the defendants if:

- (1) the plaintiff failed to prove either or both of the two elements above; or if
- (2) you find by the greater weight of the evidence that the plaintiff was contributorily negligent and that her contributory negligence was a proximate cause of the accident.

JURY INSTRUCTION NO. _____

You shall find your verdict for the plaintiff if she has proved by the greater weight of the evidence that:

- (1) the defendants were negligent; and that
- (2) the defendants' negligence was a proximate cause of the plaintiff's accident and damages.

You shall find your verdict for the defendants if:

- (1) the plaintiff failed to prove either or both of the two elements above; or if
- (2) you find by the greater weight of the evidence that the plaintiff was contributorily negligent and that her contributory negligence was a proximate cause of the accident.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 8

FINDING INSTRUCTION: MULTIPLE DEFENDANTS

You shall find your verdict for the plaintiff and against Kroger if the plaintiff has proved by the greater weight of the evidence that:

- (1) Kroger was negligent; and that
- (2) Kroger's negligence was a proximate cause of the plaintiff's accident and damages.

You shall find your verdict for the plaintiff and against Republic National if the plaintiff has proved by the greater weight of the evidence that:

- (1) Republic National was negligent; and that
- (2) Republic National's negligence was a proximate cause of the plaintiff's accident and damages.

You shall find your verdict for the plaintiff and against both defendants if the plaintiff has proved by the greater weight of the evidence that:

- (1) both defendants were negligent; and that
- (2) the negligence of both defendants was a proximate cause of the plaintiff's accident and damages.

You shall find your verdict for either or both defendants if:

- (1) as to that defendant, the plaintiff has failed to prove either negligence or proximate cause; or
- (2) you find by the greater weight of the evidence that the plaintiff was contributorily negligent and that her contributory negligence was a proximate cause of the accident.

JURY INSTRUCTION NO. _____

You shall find your verdict for the plaintiff and against Kroger if the plaintiff has proved by the greater weight of the evidence that:

- (3) Kroger was negligent; and that
- (4) Kroger's negligence was a proximate cause of the plaintiff's accident and damages.

You shall find your verdict for the plaintiff and against Republic National if the plaintiff has proved by the greater weight of the evidence that:

- (3) Republic National was negligent; and that
- (4) Republic National's negligence was a proximate cause of the plaintiff's accident and damages.

You shall find your verdict for the plaintiff and against both defendants if the plaintiff has proved by the greater weight of the evidence that:

- (3) both defendants were negligent; and that
- (4) the negligence of both defendants was a proximate cause of the plaintiff's accident and damages.

You shall find your verdict for either or both defendants if:

- (3) as to that defendant, the plaintiff has failed to prove either negligence or proximate cause; or
- (4) you find by the greater weight of the evidence that the plaintiff was contributorily negligent and that her contributory negligence was a proximate cause of the accident.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 9

STANDARD OF PROOF: DEFINITION OF GREATER WEIGHT OF THE EVIDENCE

The greater weight of all the evidence is sometimes called the preponderance of the evidence. It is that evidence which you find more persuasive. The testimony of one witness whom you believe can be the greater weight of the evidence.

JURY INSTRUCTION NO. _____

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PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 10

DEFINITION OF NEGLIGENCE

Negligence is the failure to use ordinary care. Ordinary care is the care a reasonable person would have used under the circumstances of this case.

JURY INSTRUCTION NO. _____

Negligence is the failure to use ordinary care. Ordinary care is the care a reasonable person would have used under the circumstances of this case.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 11

BURDEN OF PROOF

The plaintiff has the burden of proving by the greater weight of the evidence that the defendant was negligent and that the defendant's negligence proximately caused the accident and any of the injuries to the plaintiff.

JURY INSTRUCTION NO. _____

The plaintiff has the burden of proving by the greater weight of the evidence that the defendant was negligent and that the defendant's negligence proximately caused the accident and any of the injuries to the plaintiff.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 12

DEFINITION OF PROXIMATE CAUSE

A proximate cause of an accident, injury, or damage is a cause that, in natural and continuous sequence, produces the accident, injury, or damage. It is a cause without which the accident, injury, or damage would not have occurred.

JURY INSTRUCTION NO. _____

A proximate cause of an accident, injury, or damage is a cause that, in natural and continuous sequence, produces the accident, injury, or damage. It is a cause without which the accident, injury, or damage would not have occurred.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 13

DEFINITION OF CONTRIBUTORY NEGLIGENCE

Contributory negligence is the failure to act as a reasonable person would have acted for her own safety under the circumstances of this case.

JURY INSTRUCTION NO. _____

Contributory negligence is the failure to act as a reasonable person would have acted for her own safety under the circumstances of this case.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 14

CONTRIBUTORY NEGLIGENCE: BURDEN OF PROOF

When the defendant claims contributory negligence as a defense, the defendant has the burden of proving by the greater weight of the evidence that the plaintiff was negligent and that this negligence was a proximate cause of the plaintiff's injuries. Contributory negligence may be shown by the defendant's evidence or by the plaintiff's evidence.

JURY INSTRUCTION NO. _____

When the defendant claims contributory negligence as a defense, the defendant has the burden of proving by the greater weight of the evidence that the plaintiff was negligent and that this negligence was a proximate cause of the plaintiff's injuries. Contributory negligence may be shown by the defendant's evidence or by the plaintiff's evidence.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 15

CONTRIBUTORY NEGLIGENCE: RIGHT TO ASSUME ORDINARY CARE

The plaintiff has a right to assume that the defendant will use ordinary care until she realizes, or in the exercise of ordinary care should realize, that the defendant is not going to do so.

JURY INSTRUCTION NO. _____

The plaintiff has a right to assume that the defendant will use ordinary care until she realizes, or in the exercise of ordinary care should realize, that the defendant is not going to do so.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 16

DEFINITION OF EMPLOYER AND EMPLOYEE

An employer is a person or legal entity with the power or right to control the means and methods of performance by which another person performs the employer's work.

An employee is the person who is subject to the power or right of an employer to control the means and methods of performing the work.

JURY INSTRUCTION NO. _____

An employer is a person or legal entity with the power or right to control the means and methods of performance by which another person performs the employer's work.

An employee is the person who is subject to the power or right of an employer to control the means and methods of performing the work.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 17

EMPLOYER'S LIABILITY FOR EMPLOYEE'S NEGLIGENCE

An employer is liable for all damages proximately caused by the negligence of its employee while acting within the scope of that person's employment.

JURY INSTRUCTION NO. _____

An employer is liable for all damages proximately caused by the negligence of its employee while acting within the scope of that person's employment.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 18

EMPLOYER'S LIABILITY FOR ACTS OF EMPLOYEE'S ASSISTANT

An employer is liable for the actions of a person assisting an employee if obtaining the assistance was within the scope of the employee's job.

JURY INSTRUCTION NO. _____

An employer is liable for the actions of a person assisting an employee if obtaining the assistance was within the scope of the employee's job.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 19

GENERAL PERSONAL INJURY

If you find your verdict for the plaintiff, then in determining the damages to which she is entitled, you shall consider any of the following which you believe by the greater weight of the evidence was caused by the negligence of the defendants:

- (1) any bodily injuries she sustained and their effect on her health according to their degree and probable duration;
- (2) any physical pain and mental anguish she suffered in the past and any that she may be reasonably expected to suffer in the future;
- (3) any inconvenience caused in the past and any that probably will be caused in the future;
- (4) any medical expenses incurred in the past and any that may be reasonably expected to occur in the future;

Your verdict shall be for such sum as will fully and fairly compensate the plaintiff for the damages sustained as a result of the defendants' negligence.

JURY INSTRUCTION NO. _____

If you find your verdict for the plaintiff, then in determining the damages to which she is entitled, you shall consider any of the following which you believe by the greater weight of the evidence was caused by the negligence of the defendants:

- (1) any bodily injuries she sustained and their effect on her health according to their degree and probable duration;
- (2) any physical pain and mental anguish she suffered in the past and any that she may be reasonably expected to suffer in the future;
- (3) any inconvenience caused in the past and any that probably will be caused in the future;
- (4) any medical expenses incurred in the past and any that may be reasonably expected to occur in the future;

Your verdict shall be for such sum as will fully and fairly compensate the plaintiff for the damages sustained as a result of the defendants' negligence.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 20

REASONABLE PROOF

The burden is on the plaintiff to prove by the greater weight of the evidence each item of damage she claims and to prove that each item was caused by the defendants' negligence. She is not required to prove the exact amount of her damages, but she must show sufficient facts and circumstances to permit you to make a reasonable estimate of each item. If the plaintiff fails to do so, then she cannot recover for that item.

JURY INSTRUCTION NO. _____

The burden is on the plaintiff to prove by the greater weight of the evidence each item of damage she claims and to prove that each item was caused by the defendants' negligence. She is not required to prove the exact amount of her damages, but she must show sufficient facts and circumstances to permit you to make a reasonable estimate of each item. If the plaintiff fails to do so, then she cannot recover for that item.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 21

NOTICE TO KROGER

Kroger cannot delegate its duty to maintain its premises in a reasonably safe condition for Mrs. Adams to Republic. Notice of an unsafe condition to the employee of Republic is notice to Kroger, therefore, if you find that Republic was negligent, then you shall find that Kroger was negligent.

Love v. Schmidt, 239 Va. 357, 361, 389 S.E.2d 707, 708 (1990) and
Southern Floors and Acoustics v. Max-Yeboah, 267 Va. 682, 688, 594 S.E.2d 908, 912 (2004)

JURY INSTRUCTION NO. _____

Kroger cannot delegate its duty to maintain its premises in a reasonably safe condition for Mrs. Adams to Republic. Notice of an unsafe condition to the employee of Republic is notice to Kroger, therefore, if you find that Republic was negligent, then you shall find that Kroger was negligent.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 22

DEFINITION OF INVITEE

An invitee is one who visits premises lawfully at the express or implied invitation of the occupant. She is one who visits other than for a social purpose or for her own convenience.

An express invitation is one made directly or indirectly by spoken or written words to come on the premises.

An implied invitation is one made by opening the premises to others for a particular purpose.

JURY INSTRUCTION NO. _____

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PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 23

INVITEE'S RIGHT TO ASSUME SAFE CONDITION OF PREMISES

An invitee has the right to assume that the premises are reasonably safe for her visit.

JURY INSTRUCTION NO. _____

An invitee has the right to assume that the premises are reasonably safe for her visit.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 24

OCCUPANT'S DUTY TO INVITEE: GENERAL

An occupant of premises does not guarantee an invitee's safety, but has the duty:

- (1) to use ordinary care to have the premises in a reasonably safe condition for an invitee's use consistent with the invitation; and
- (2) to use ordinary care to warn an invitee of any unsafe condition about which the occupant knows, or by the use of ordinary care should know.

If an occupant fails to perform either or both of these duties, then he is negligent.

JURY INSTRUCTION NO. _____

An occupant of premises does not guarantee an invitee's safety, but has the duty:

- (1) to use ordinary care to have the premises in a reasonably safe condition for an invitee's use consistent with the invitation; and
- (2) to use ordinary care to warn an invitee of any unsafe condition about which the occupant knows, or by the use of ordinary care should know.

If an occupant fails to perform either or both of these duties, then he is negligent.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 25

OCCUPANT'S DUTY TO INVITEE: REMOVE FOREIGN OBJECTS

An occupant of premises has the duty to an invitee to use ordinary care to remove a foreign substance or object from the floor, if the foreign substance or object creates an unsafe condition, within a reasonable time after he knew, or should have known, it was there, regardless of how it got there.

If an occupant fails to perform this duty, then he is negligent.

JURY INSTRUCTION NO. _____

An occupant of premises has the duty to an invitee to use ordinary care to remove a foreign substance or object from the floor, if the foreign substance or object creates an unsafe condition, within a reasonable time after he knew, or should have known, it was there, regardless of how it got there.

If an occupant fails to perform this duty, then he is negligent.